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No. 04-1544

Supreme Court, U.S.
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-IN THE

Supreme Court of the United States

VICKIE LYNN MARSHALL,
Petitioner,

v.

E. PIERCE MARSHALL,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF *AMICUS CURIAE* WASHINGTON LEGAL FOUNDATION IN SUPPORT OF RESPONDENT

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QUESTION ADDRESSED BY *AMICUS CURIAE*

The question addressed by *amicus curiae* is:

Whether a bankruptcy court lacks jurisdiction in a civil proceeding where the subject matter of the action falls within the exclusive *in rem* jurisdiction of a probate or other state court.

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BRIEF OF *AMICUS CURIAE* WASHINGTON LEGAL FOUNDATION IN SUPPORT OF RESPONDENT

Amicus curiae Washington Legal Foundation ("WLF") respectfully submits that the judgment of the court of appeals should be affirmed.[1]

INTEREST OF *AMICUS CURIAE*

WLF is a nonprofit public interest law and policy center based in Washington, D.C., with thousands of supporters nationwide. WLF regularly appears before federal and state courts to promote economic liberty, free enterprise, and a limited and accountable government. WLF has filed briefs in this Court and elsewhere addressing the limitations upon the scope of jurisdiction to be exercised by federal and state courts. *See, e.g., Lincoln Property Co. v. Roche,* 126 S. Ct. 606 (2005); *American Home Products Corp. v. Collins, cert. denied,* 125 S. Ct. 1823 (2005).

WLF fully supports the position of E. Pierce Marshall ("Respondent") that this Court should affirm the Ninth Circuit's judgment and hold that, under the probate exception, the federal district court lacked jurisdiction to hear this case. WLF writes separately to address the broader implications of the challenge by Vickie Lynn Marshall ("Petitioner") to the probate exception; specifically, the negative impact upon the orderly and effective administration of justice in the exercise by both federal and state courts of *in rem* jurisdiction. The touchstone of *in rem* jurisdiction, and its effective exercise, is the *exclusive* jurisdiction granted to one court over the *res*,

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[1] Pursuant to this Court's Rule 37.6, WLF states that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than WLF or its counsel, contributed monetarily to the preparation or submission of this brief. Letters consenting to the filing of this brief have been submitted to the Clerk.

without interference by other courts. The unduly restrictive reading of the probate exception advanced by Petitioner contradicts nearly two centuries of judicial precedent that were designed to avoid "unseemly and disastrous conflicts" between federal and state courts of the kind that have unfortunately occurred in this case.

STATEMENT OF THE CASE

Petitioner married J. Howard Marshall II ("Decedent") in 1994. Decedent died in 1995. ER[2] 95. Prior to his death, Decedent conveyed and transferred most of his property to a living trust established under a written trust instrument. ER 1018, 2623. He also left a series of wills, the last of which (the "Will") left all of his property to the Trust to be distributed after his death in accordance with the terms of the Trust. ER 510, 514-16. (The Will and Trust are collectively referred to as the "Estate Plan").

Prior to Decedent's death, Petitioner commenced proceedings in the probate court for the state of Texas, seeking a declaration concerning the Trust's validity and alleging that Respondent tortiously interfered with her property rights with respect to Decedent's assets. ER 4615-17, 5620. After Decedent died, Petitioner filed a further application seeking a declaration that Decedent died intestate. ER 816-18. Respondent opposed the application and sought to admit the Will in the Texas probate court. ER 836-45. Petitioner thereafter contested the Will, challenged the validity of the Estate Plan, and pursued her claim against Respondent – all in the Texas probate court proceeding that she commenced. ER 1319-31, 2863-65, 5523-31. A five month jury trial took place in 2000 and 2001, ER 4706, and on March 7, 2001, the jury returned its verdict upholding the validity of the Trust

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2 The term "ER" refers to certain "excerpts of record" filed in the Ninth Circuit pursuant to that Court's local rules.

and Will and rejecting the various claims seeking recoveries at odds with Decedent's Estate Plan. ER 3719, 3735. An initial probate judgment was entered by the Texas probate court on August 15, 2001, ER 4001, and the second amended final probate judgment was entered on December 7, 2001, which admitted the Will to probate, and found both the Will and the Trust to be genuine and valid and not the product of improper conduct. ER 4717.

In January 1996, while the Texas probate proceeding was pending, Petitioner filed a voluntary bankruptcy petition in California. ER 2642. Five months after filing for bankruptcy, she commenced a civil proceeding against Respondent in bankruptcy court. ER 948-49. The new lawsuit involved the same subject matter as the controversies to be determined by the Texas probate court, requiring consideration of issues such as the Decedent's intent concerning disposition of his assets and the validity of the Estate Plan. Compare ER 948-49 with ER 2863-65. The bankruptcy court ultimately issued a decision finding that Petitioner had an expectancy of a substantial portion of Decedent's wealth, and after concluding that Respondent interfered with that expectancy, awarded approximately $450 million to the Petitioner. App.[3] 198-99.

Respondent appealed to the federal district court. App. 148-99. There, the court concluded that the civil proceeding was non-core, and therefore reviewed *de novo* the bankruptcy court's decision. App. 171-87. The district court ultimately awarded Petitioner about $88.5 million, concluding that Decedent's signature on the Trust was falsified, that the Estate Plan did not reflect Decedent's true intentions, and that Respondent had interfered with Decedent's intent to give Petitioner an alleged gift by engaging in illegitimate "estate

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[3] "App." refers to the Appendix to Petition for Writ of Certiorari.

planning transactions for [Decedent]." ER 65, 73; App. 78-136, 194-46.

Upon further appeal, the Ninth Circuit vacated the district court's judgment, finding that the "probate exception" applies in bankruptcy cases. App. 1-38. The Ninth Circuit based its ruling in part on the exclusive *in rem* jurisdiction of probate courts that has a binding effect "upon the whole world," including United States district courts, of determinations made by the probate court. Because Petitioner's claim that Decedent intended to give her a gift "went to the very essence of the testamentary instruments executed by J. Howard Marshall II in his lifetime," App. 35, the Ninth Circuit found her claims to be "'in substance nothing more than a thinly veiled will contest" and a "disguised attack" on the Trust and the disposition of the property under the Trust. App. 31, 36-37.

Petitioner filed a petition for a writ of *certiorari* to the Ninth Circuit, which this Court granted. *Marshall v. Marshall*, 126 S. Ct. 35 (2005).

SUMMARY OF ARGUMENT

In *The Elegant Universe*, author Brian Greene describes the quest by physicists for more than half a century to formulate a unified theory of physics, known as "string theory," that reconciles the apparent conflict between the theories of general relativity and quantum mechanics. Brian Greene, *The Elegant Universe* 15 (1999).

In the universe of law where courts exercise *in rem* jurisdiction, there already exists such a unified theory. The fundamental principles of that "theory" have been developed by the Court over two centuries, and include the following:

First, the exercise by a court of *in rem* jurisdiction is always exclusive. This reflects the need to promote harmonious cooperation among courts and "[t]o avoid unseemly and disastrous conflicts in the administration of our dual judicial

system." *Penn General Casualty Co. v. Commonwealth of Pennsylvania ex rel. Schnader*, 294 U.S 189, 195 (1935).

Second, in order to resolve potential conflicts among courts seeking to exercise *in rem* jurisdiction, this Court has developed the doctrine of "prior exclusive jurisdiction." That doctrine imposes a prudential limitation on the jurisdiction of courts in proceedings where another court has previously exercised *in rem* jurisdiction over the *res*. *United States v. Bank of New York & Trust Co.*, 296 U.S. 463, 478 (1936); *United States v. One 1985 Cadillac Seville*, 866 F.2d 1142, 1145 (9th Cir. 1989)(citing *Penn General Casualty*, 294 U.S. at 195).

Third, because of the nature of *in rem* proceedings as "one against the world," the limitation on the jurisdiction of other courts, whether exercised *in rem* or *in personam*, applies to all disputes that "come incidentally in controversy" with the "same subject matter" as that adjudicated in the *in rem* proceeding. *Gelston v. Hoyt*, 16 U.S. (3 Wheat.) 246, 315 (1818). Such relief is necessary to avoid "collateral" and "indirect" attacks on the exclusive exercise of *in rem* jurisdiction. *Id.* at 313.

This Court recognized more than a century ago that the "continued prevalence" of the probate exception can be attributed to the nature of probate actions as *in rem* proceedings. *Case of Broderick's Will*, 88 U.S. (21 Wall.) 503, 509 (1874). A probate action is, however, but one of many kinds of proceedings that are based upon the principles of *in rem* jurisdiction. Accordingly, the Petitioner's efforts to limit the application of the probate exception, if successful, would have negative implications for all federal and state courts that depend upon their *in rem* jurisdiction to grant relief that is effective "against the world."

The Court anticipated this very peril when it warned in *Gelston v. Hoyt*, nearly two centuries ago, about the "mischievous consequences" that would result if decisions by courts with exclusive *in rem* jurisdiction were subject to "in-

direct" or "collateral" attack. *Id.* at 313. In *Gelston*, the Court held that a state court lacked jurisdiction to hear defenses to a tort action where such defenses were premised on adjudication of questions related to forfeiture and seizure that were subject to the exclusive *in rem* jurisdiction of the federal admiralty court. *Id.* at 313-14. The same reasoning applies to this case – namely, the federal district court lacks jurisdiction to hear a civil proceeding involving subject matter that falls within the exclusive *in rem* jurisdiction of the Texas probate court.

The United States, as *amicus curiae* supporting the Petitioner, has raised concerns that the Ninth Circuit's decision, if affirmed, will deprive federal courts of jurisdiction to determine such matters as the tax liability of a decedent's estate. That concern is wholly misplaced. The exclusive *in rem* jurisdiction vested in probate courts does not equate to the wholesale elimination of the concurrent *in personam* jurisdiction of federal courts "to establish a debt or a right to share in property, and thus to obtain an adjudication which might be had without disturbing the control of the state court." *United States v. Bank of New York & Trust Co.*, 296 U.S. at 478; *see also Waterman v. Canal-Louisiana Bank & Trust Co.*, 215 U.S. 33, 44 (1909). It does, however, prevent federal courts from interfering with state probate actions, whether directly by contesting probate of a will or indirectly in the manner pursued by Petitioner.

As for the concern of the United States Trustee Program (the "Program") that recognition of a "broad probate exception" could interfere with the ability of bankruptcy courts to administer debtors' estates expeditiously, the Program has it backwards. As a practical matter, restrictions on the effective exercise of *in rem* jurisdiction by courts, if generally applied in bankruptcy and other *in rem* proceedings, would have a more widespread and deleterious impact on the bankruptcy system than would application of the probate exception in the fewer number of cases where the jurisdiction of probate courts and bankruptcy courts intersect.

ARGUMENT

I. ALL COURTS THAT EXERCISE *IN REM* JURISDICTION DO SO EXCLUSIVELY

As this Court has recognized for nearly two centuries, probate proceedings are actions *in rem*. *E.g.*, *Gelston v. Hoyt*, 16 U.S. at 315; *Case of Broderick's Will*, 88 U.S. at 509.[4] Indeed, the "continued prevalence" of the probate exception has been attributed by this Court to the manner in which the probate of a deceased person's estate "partakes, in some degree, of the nature of a proceeding *in rem*." *Broderick's Will*, 88 U.S. at 509. Accordingly, the general principles of law governing *in rem* jurisdiction apply to probate matters.

Both federal and state courts exercising *in rem* jurisdiction are granted exclusive jurisdiction over the *res* to be administered.[5] This rule has been regularly applied in jurisdictional disputes between federal and state courts involving property that has been seized or attached, where this Court has consistently held that property cannot be subject to two jurisdictions. *Covell v. Heyman*, 111 U.S. 176, 181-82 (1884). In *Covell v. Heyman*, the Court explained the effect of one court's jurisdiction over the property upon the jurisdiction of the other:

> [W]hen one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other as if it had

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4 Probate proceedings under Texas law are no exception to this rule. *E.g.*, *Mooney v. Harlin*, 622 S.W.2d 83, 85 (Tex. 1981).

5 *See* TEX. PROB. CODE ANN. §§ 5A(b), 5(F)("Any cause of action appertaining to estates or incident to an estate shall be brought in a statutory probate court" rather than in the district court, including "All matters relating to the collection, settlement, partition and distribution of estates of deceased persons").

> been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void.

Id. at 182.

The exclusive *in rem* jurisdiction of courts "is a principle of comity with perhaps no higher sanction . . ." *Id.* This Court has long recognized that "[a] most injurious conflict of jurisdiction would be likely often to arise between the federal and state courts if the final process of the one could be levied on property which had been taken by the process of the other." *Hagan v. Lucas*, 35 U.S. (10 Pet.) 400, 403 (1836). More recently, in *Penn General Casualty*, 294 U.S 189, this Court reaffirmed that where two suits before a federal and state court are *in rem* or *quasi in rem*, "the jurisdiction of one court must of necessity yield to that of the other" in order "[t]o avoid unseemly and disastrous conflicts in the administration of our dual judicial system." *Id.* at 195.

II. THE DOCTRINE OF PRIOR EXCLUSIVE JURISDICTION APPLIES TO ALL *IN REM* AND *QUASI IN REM* PROCEEDINGS

A. The Doctrine of Prior Exclusive Jurisdiction Promotes Harmonious Cooperation Among Federal and State Courts

The need to avoid conflicts and promote harmonious cooperation between federal and state courts led to the development by this Court of the doctrine of "prior exclusive jurisdiction." Under this principle, applicable to both federal and state courts, "the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction *to the exclusion of the other. . . .*" *United States v. Bank of New York & Trust Co.*, 296 U.S. at 477 (emphasis added). The doctrine reflects "the discharge of the long-recognized duty of this court to give effect to such 'methods of procedure as shall serve to conciliate the distinct and independent tribunals of the States and of the Union, so that they may co-operate as

harmonious members of a judicial system coextensive with the United States.'" *Id.* at 477-78 (quoting *Taylor v. Carryl*, 61 U.S. (20 How.) 583, 595 (1858)).[6]

The doctrine of prior exclusive jurisdiction has never been restricted to cases where property has been seized under judicial process, but rather "applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of similar nature, where, to give effect to its jurisdiction, the court must control the property." *Id.* at 477. In *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. 456 (1939), for example, the doctrine was applied in a dispute specifically involving a trust. The trustees had filed an account of the trust in the Court of Common Pleas for Pennsylvania. Certain of the beneficiaries brought suit in equity in federal district court against the trustees, alleging mismanagement of the trust and seeking removal of the trustees and an accounting and repayment of the estate's losses. The trustees sought to enjoin the beneficiaries from continuing the federal lawsuit. Concluding that the Common Pleas Court "could not *effectively exercise the jurisdiction vested in it*, without a substantial measure of control of the trust funds," this Court held that the jurisdiction of the Common Pleas Court was *quasi in rem* and thus exclusive, and that the federal district court was without jurisdiction of the suit brought before it. *Id.* at 467 (emphasis added).

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6 The doctrine has been explained as one that is not a constitutional limitation upon the jurisdiction of federal courts, but rather "a prudential limitation applied by the Supreme Court in the interest of judicial harmony." *United States v. One 1985 Cadillac Seville*, 866 F.2d 1142, 1145 (9th Cir. 1989). Although a prudential limitation, the Ninth Circuit has held that, under this Court's well established precedent, a federal court lacks discretion to accept jurisdiction and "must yield to a prior state proceeding." *Id.* (citing *Penn General Casualty Co.*, 294 U.S. at 195).

B. Neither 28 U.S.C. § 1334 Nor the Bankruptcy Code Abrogate the Doctrine of Prior Exclusive Jurisdiction As It Applies to *In Rem* State Court Proceedings Involving Non-Debtor Assets

Petitioner suggests in her brief that Congress, when it enacted 28 U.S.C. § 1334 in 1978, as amended in 1984, intended to overrule the doctrine of prior exclusive jurisdiction and confer federal district courts with jurisdiction over property subject to pre-existing *in rem* proceedings. That reading of section 1334 finds no support in the statute's plain language, or elsewhere.

Petitioner incorrectly relies upon section 1334(b), which provides:

> Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. § 1334(b). Notably, subsection (b) refers to "any *Act of Congress* that confers exclusive jurisdiction" but makes no mention of "state law" that confers exclusive jurisdiction. *Id.* (emphasis added). Given the use of the phrase "state law" elsewhere in section 1334 (specifically, subsection (c)), the absence of any reference to "state law" in section 1334(b), when coupled with the explicit reference to "any Act of Congress," is telling. If anything, it indicates a deliberate intention *not* to provide district courts with original jurisdiction over proceedings otherwise subject to the exclusive *in rem* jurisdiction of state courts. *E.g.*, *Patterson v. Shumate*, 504 U.S. 753, 758 (1992)(when Congress meant to refer to state law under the Bankruptcy Code, it used the term "state law").

Nor does subsection (e) of section 1334 support Petitioner's argument. Section 1334(e) grants the district court exclusive jurisdiction over "all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate." 28 U.S.C. § 1334(e). However, the case at issue does *not* involve the district court's exercise of jurisdiction over the *res* of the *Petitioner*. Here, the Petitioner confuses the *in rem* and *in personam* jurisdiction granted to federal courts in bankruptcy cases. The civil action in which Petitioner has brought her claims against Respondent is not an *in rem* proceeding as it relates to her bankruptcy proceeding, but rather a chose in action in which the district court purported to exercise *in personam* jurisdiction over Respondent. Merely because her personal claims (to the extent they exist) may be property of the estate does not convert the civil proceeding against Respondent into one that is *in rem*.[7] The only *res* in dispute is Decedent's probate estate, and Petitioner's claim that she was entitled to receive that property upon Decedent's death. Those are matters subject to the exclusive *in rem* jurisdiction of the Texas probate court.

Given that the *res* in dispute is *not* the property of the debtor or the estate, section 543 of the Bankruptcy Code would not apply. That provision appears to constitute the only statutory exception under the Bankruptcy Code to the doctrine of *prior* exclusive jurisdiction. Section 543 requires

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[7] Indeed, if a debtor's ownership of a chose in action was itself sufficient to create exclusive in *rem* jurisdiction over civil proceedings brought to pursue those claims, then bankruptcy courts would have exclusive jurisdiction over every one of those civil proceedings. One need look no further than the plain language of section 1334(b), which provides that such jurisdiction is "original *but not exclusive*," to reject that premise. 28 U.S.C. § 1334(b)(emphasis added); *see Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 7 (2000)(requiring that statute be interpreted based upon its plain language).

a "custodian" of property of the debtor or the estate not to take action with respect to such property and to turn it over to the bankruptcy trustee. 11 U.S.C. § 543. The term "custodian" is defined under section 101(11) of the Bankruptcy Code to include state court receivers, trustee or assignees under a general assignment for the benefit of creditors. 11 U.S.C. § 101(11). The legislative history to section 101(11) explains that custodian is defined to mean a "prepetition liquidator of the *debtor's* property," or other court officers that perform functions "substantially similar to those of a receiver or trustee." H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 310 (1977)(emphasis added), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6267. The proceeding before the Texas probate court obviously does not fall within the scope of section 543, as it involved administration of the *Decedent's* property (not the debtor's) and has no "custodian" within the meaning of section 101(11).

Other than section 543, which affects only the *priority* of exclusive jurisdiction and in any event is not applicable to this case, there is no indication in the language of section 1334, the Bankruptcy Code, or elsewhere that Congress sought to depart from the doctrine of prior exclusive jurisdiction. In other cases, this Court has presumed that Congress continued "'past bankruptcy practice absent a clear indication that Congress intended . . . a departure . . . .'" *Cohen v. De La Cruz*, 523 U.S. 213, 221 (1998)(quoting *Pennsylvania Pub. Welfare Dep't v. Davenport*, 495 U.S. 552, 563 (1990)). As noted above, the doctrine of prior exclusive jurisdiction has been applied for more than a century and has been recognized by this Court as "a principle of comity with perhaps no higher sanction." *Covell v. Heyman*, 111 U.S. at 182. Thus, one would expect something more explicit from Congress (comparable to Section 543) if it intended to deviate from those principles in any respect.

Indeed, the underpinning of that doctrine, *i.e.*, that prior possession of the *res* determines whether a court's jurisdiction lies, was reinforced in a recent case involving the exer-

cise of *in rem* jurisdiction. In *California v. Deep Sea Research, Inc.*, 523 U.S. 491 (1998), the Court held that the Eleventh Amendment did not preclude the federal court from exercising its exclusive *in rem* admiralty jurisdiction to adjudicate the State of California's claim to a shipwreck. *Id.* at 507-08; 28 U.S.C. § 1333 (granting federal courts jurisdiction exclusive of states over admiralty cases). But the Court expressly based its ruling on the fact that the State of California did *not* have possession of the *res*, and distinguished other prior opinions of this Court on that very basis. *Id.* at 504 ("[i]n this case, unlike in *Treasure Salvors*, DSR asserts rights to a *res* that is not in the possession of the State"). The fact that the Court's decision turned on the state's non-possession of the *res* suggests that the doctrine of prior exclusive jurisdiction retains its vitality even where Congress has otherwise granted, by statute, exclusive *in rem* jurisdiction to a federal court.

Petitioner cites to three cases where she contends courts have, since enactment of section 1334, rejected the doctrine of prior exclusive jurisdiction and permitted federal courts to exercise jurisdiction notwithstanding prior "*in rem*" proceedings. *White v. White (In re White)*, 851 F.2d 170, 172-74 (6th Cir. 1988)(prior divorce proceeding); *Slay Warehousing Co., Inc. v. Modern Boats, Inc. (In re Modern Boats)*, 775 F.2d 619, 620 (5th Cir. 1985)(prior admiralty proceeding); *In re French*, 139 B.R. 476, 482 (Bankr. D.S.D. 1992)(prior divorce proceeding). Each of those cases are inapposite. Two of them involved prior divorce proceedings, which have been found by this Court *not* to constitute *in rem* proceedings to which the world is a party. *E.g.*, *Williams v. State of North Carolina*, 317 U.S. 287, 297 (1942)(citing *Haddock v. Haddock*, 201 U.S. 562 (1906)) ("[t]he historical view that a proceeding for a divorce was a proceeding *in rem* [citation omitted] was rejected by the *Haddock* case"); *Williams v. State of North Carolina*, 325 U.S. 226, 232 (1945)("insofar as a divorce decree partakes of some of the characteristics of a decree *in rem*, it is misleading to say that all the world is party

to a proceeding *in rem*").[8] The third case, *Modern Boats*, 775 F.2d at 610, involved a prior federal admiralty proceeding which, under the plain language of section 1334(b) granting original jurisdiction "notwithstanding any Act of Congress," does not preclude the exercise of original federal jurisdiction by the district court.

Finally, Petitioner points to Rule 1016 of the Federal Rules of Bankruptcy Procedure, under which the death of a debtor "shall not abate a liquidation case under chapter 7 of the Code." FED. R. BANKR. P. 1016. Of course, that rule is entirely in accord with the doctrine of prior exclusive jurisdiction. Where a debtor files for bankruptcy protection and then subsequently dies, the federal district court has prior (and thus exclusive) jurisdiction over the *res*, *i.e.*, the property of the debtor's estate.

Accordingly, the doctrine of prior exclusive jurisdiction remains applicable state probate proceedings, and has not been abrogated either by section 1334 or the enactment of the Bankruptcy Code. Resolution of the appeal thus turns on the scope and effect of the Texas probate court's exclusive *in rem* jurisdiction, addressed *infra*.

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[8] Indeed, the fact that divorce proceedings are not *in rem* distinguishes this case from *Ankerbrandt v. Richards*, 504 U.S. 689 (1992), upon which Petitioner heavily relies.

III. THE SCOPE AND EFFECT OF A PROBATE COURT'S EXCLUSIVE *IN REM* JURISDICTION MUST BE EXPANSIVE ENOUGH TO GRANT EFFECTIVE RELIEF "AGAINST THE WORLD"

A. A Court's Exclusive *In Rem* Jurisdiction Is Not Limited Solely to Disposition of the Property

An *in rem* proceeding is "one against the world," enabling a court with jurisdiction over the *res* to "determine all claims that anyone, whether named in the action or not, has to the property or thing in question." *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 448 (2004). In one of the earlier cases applying the "probate exception," this Court has described the nature of a proceeding *in rem* as one "in which all persons in the world who have any interest are deemed parties, and are concluded as upon *res judicata* by the decision of the court having jurisdiction." *Broderick's Will*, 88 U.S. at 509.

By its very nature, the relief available under an *in rem* proceeding is not narrowly limited to disposition of the *res*. In order to grant relief "against the world," the court must be able to "effectively exercise the jurisdiction vested in it." *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. at 466-67. In *Princess Lida*, for example, the Court held that, where a state court was vested with exclusive *quasi in rem* jurisdiction over a trust, the federal district court lacked jurisdiction over an action charging the trustees with mismanagement of the trust estate and seeking, as a remedy, to remove the trustees, require them to file an account of the trust and post a bond. *Id.* at 467-68.

Likewise, in *Gardner v. New Jersey*, 329 U.S. 565 (1947), the Court held that if the reorganization court lacked the power to deal with tax liens of a state, "the assertion by the State of a lien would pull out chunks of an estate from the reorganization court and transfer a part of the struggle over the corpus into tax bureaus and other state tribunals." *Id.* at

577. That result would "fly in the teeth" of the exclusive jurisdiction granted to the reorganization court. *Id.* This Court explained that exclusive jurisdiction over the debtor and its property:

> is not limited to the prevention of interference with the use of the property by the trustee; it "extends also to the adjudication of questions respecting the title." [Citations omitted]. It is the exclusive jurisdiction of the reorganization court which gives it power to preserve the railway as a unit and as a going concern and to prevent it from being divided up and dismembered piece-meal.

Id.[9]

The scope and effect of a court's exclusive *in rem* jurisdiction can apply to an *in personam* action before another court. For example, this Court held in *Hood* that a discharge of a debt by a bankruptcy court, although an *in rem* proceeding, "'operates as an injunction' against creditors who commence or continue an action against the debtor *in personam* to recover or to collect a discharged debt . . . ." *Hood*, 541 U.S. at 447, 448 n.4. That injunction over *in personam* actions is necessary for a bankruptcy court exercising *in rem* jurisdiction to administer the *res* effectively, without interference by other courts.

Even when faced with constitutional challenges to a court's exclusive *in rem* jurisdiction, this Court has consistently confirmed the expansive authority of such courts to grant "relief against the world." Most recently in *Hood*, this

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[9] To be clear, unlike in *Gardner*, the dispute between Petitioner and Respondent in this case is not over the title of any property of the *debtor's* estate, but rather goes to the entitlement of the parties to the *res* of *Decedent's* estate.

Court concluded that the bankruptcy court's *in rem* jurisdiction was binding on the State of Tennessee, even where there was no waiver of the state's sovereign immunity under the Eleventh Amendment. *Id.* at 448 ("[u]nder our longstanding precedent, States, whether or not they choose to participate in the proceeding, are bound by a bankruptcy court's discharge order no less than other creditors"); *see also California v. Deep Sea Research, Inc.*, 523 U.S. at 507-08 (Eleventh Amendment held not to bar federal *in rem* jurisdiction over claims of California to a shipwreck, at least where the *res* was not in the State's possession).

Similarly, in *Broderick's Will*, this Court explained that *in rem* jurisdiction is binding even upon parties that (in what would otherwise violate due process) never received notice of the proceeding:

> The world must move on, and those who claim an interest in persons or things must be charged with knowledge of their status and condition, and of the vicissitudes to which they are subject. This is the foundation of all judicial proceedings *in rem*.

Broderick's Will, 88 U.S. at 519.

Given that the exclusive jurisdiction of *in rem* proceedings applies to states with Eleventh Amendment sovereign immunity and parties without any notice of the proceeding, there seems no basis to except from that expansive reach an individual such as the Petitioner who is neither a sovereign nor unaware of (and who in fact commenced and was a party to) the pending probate proceeding.

Petitioner relies upon *Waterman v. Canal-Louisiana Bank & Trust Co.*, 215 U.S. 33 (1909), but that decision actually supports the Respondent. In *Waterman*, the complainant, a niece of the decedent, sought an accounting in federal court of a probate estate, and also sought to cause the executor to recognize her legacy under the will and pay the residue

of the estate over to her. *Id.* at 42. With respect to her request for an accounting of the probate estate, the Court held that the federal district court lacked jurisdiction to hear that request, concluding that such relief would interfere with the probate court's jurisdiction to "determin[e] the amount of the residue arising from the settlement of the estate in the court of probate." *Id.* at 46. The Court did find that the federal court had jurisdiction to establish complainant's interest in her legacy and her right to recover from any residue of the estate not previously distributed. It did so, however, only after explicitly noting that the complainant "does not seek to set aside the probate of the will, which the bill alleges was *duly established and admitted to probate in the proper court of the state.*" *Id.* at 46 (emphasis added). Given the absence of any direct or indirect challenge to the will, or whether its terms reflected the decedent's testamentary interest, and "because of the facts presented in the bill," the Court held that the federal district court's exercise of jurisdiction in that limited circumstance would not interfere with the "ordinary settlement of the estate" or the possession of the estate in the hands of the executor. *Id.* Even so, the Court made clear that the federal district court lacked jurisdiction to determine the *amount* of the residue arising from the settlement of the estate in the court of probate, leaving that determination to the exclusive jurisdiction of the state probate court. *Id.*

Thus, the limited claim which the Court allowed the complainant in *Waterman* to adjudicate in federal court did not interfere with the probate court's ability to grant effective *in rem* relief "against the world." In contrast, Petitioner's claims against Respondent, which are premised on the assertion that Decedent intended to grant a portion of his estate to Petitioner, indisputably interfere with the Texas probate court's exercise of its jurisdiction.

B. In *Gelston v. Hoyt*, this Court Answered the Question Presented On Appeal In This Case

Petitioner urges an unduly narrow view of *in rem* jurisdiction that ignores well settled precedent of this Court. The very question concerning the extent to which a court's exclusive *in rem* jurisdiction deprives another court of jurisdiction over the subject matter of the *in rem* proceeding was specifically addressed in an opinion written by Justice Story nearly 200 years ago, *Gelston v. Hoyt*, 16 U.S. 246.

In *Gelston*, the petitioners, acting under color of United States law, seized a ship from the respondent. Because the seizure for the forfeiture was under United States law, the federal district court had exclusive *in rem* jurisdiction to determine whether the seizure was "rightful or tortious." *Id.* at 312. The district court ruled in favor of the respondent, finding the seizure to have been unjustified and ordered the ship returned. The respondent then brought suit for trespass and conversion against the petitioners in the state court of New York. In defense against the action, the petitioners sought to offer, as justification for the trespass or in mitigation of damages, evidence to prove their right of seizure. The state court refused to consider that evidence and entered judgment in favor of the respondent; the supreme court of the state of New York affirmed.

In affirming the judgment of the state court, and finding that the state court could not "entertain and decide the question of forfeiture in this case," *id.* at 312, this Court based its decision upon the exclusive *in rem* jurisdiction vested in the federal court:

> This is a seizure for a forfeiture under the laws of the United States, and, consequently, the right to decide upon the same, by the very terms of the statutes, exclusively belongs to the proper court of the United States; and it depends upon its final decree, proceeding *in rem*, whether the seizure is to be adjudged

> right or tortious. If a sentence of condemnation be pronounced, it is conclusive, that a forfeiture is incurred; if a sentence of acquittal, it is equally conclusive against the forfeiture; and in either case, the question cannot be litigated in another forum.

Id. at 312 (emphasis added). This Court explained that the reasonableness of the doctrine "results from the very nature of proceedings *in rem*" and the need to avoid "mischievous consequences":

> The decree of the court acts upon the thing in controversy, and settles the title of the property itself, the right of seizure, and the question of forfeiture. If its decree were not binding upon the world upon the points which it professes to decide, *the consequences would be most mischievous to the public.* In case of condemnation no good title to the property could be conveyed, and no justification of the seizure could be asserted under its protection. In case of acquittal, a new seizure might be made by any other persons *toties quoties* for the same offence, and the claimant be loaded with ruinous costs and expenses.

Id. at 313 (emphasis added). Although the Court noted that the above reasoning applies even where a court of competent jurisdiction lacks exclusive jurisdiction, it found such reasoning to apply "with greater force to a court of exclusive jurisdiction; since an attempt to re-examine its decree, or deny its conclusiveness, is a manifest violation of its exclusive authority." *Id.*

Justice Story's opinion answers the question presented to this Court by Petitioner. In *Gelston*, the Court found to be impermissible the attempt by petitioners to raise, as a defense of the state court action, the right of seizure and question of forfeiture. That defense was recognized as nothing more

than an "indirect" and "collateral" attack on the district court's exclusive *in rem* jurisdiction:

> It is doing that *indirectly*, which the law itself prohibits to be done directly. It is, in effect, *impeaching collaterally*, a sentence which the law has pronounced to be valid until vacated or reversed on appeal by a superior tribunal.

Id. (emphasis added). Accordingly, this Court found that by virtue of the federal district court's decree of acquittal, "the seizure is established conclusively to be tortious, and the party is entitled to his full damages for the injury." *Id.* at 314.

In *Gelston*, this Court premised its decision on the exclusivity and nature of a court's *in rem* jurisdiction, and not merely upon principles of *res judicata*. This is evident from the Court's holding that the exclusive jurisdiction of an *in rem* proceeding applied to the petitioners whether or not they were deemed to have been parties to that proceeding:

> In legal propriety, therefore, he cannot be deemed a stranger to the decree *in rem*; he is at all events a privy, and as such must be bound by a sentence which ascertains the seizure to be tortious. *But if he were a mere stranger, he would still be bound* by such sentence, because the decree of a court of competent jurisdiction *in rem* is, as to the points directly in judgment, conclusive upon the whole world.

Id. at 320 (emphasis added).

Leaving no room for doubt that the teachings of Justice Story apply to this case, the Court expressly recognized in *Gelston* that the principles and reasoning set forth therein would apply with equal force to probate proceedings:

> [N]o principle of general law seems better settled, than that the decision of a court of a peculiar and exclusive jurisdiction must be completely binding upon the judgment of every other court, in which *the same subject matter comes incidentally in controversy*. It is familiarly known in its application to the sentences of ecclesiastical courts, *in the probate of wills and granting of administrations of personal estate*; to the sentences of prize courts in all matters of prize jurisdiction; and to the sentences of courts of admiralty and other courts acting *in rem*, either to enforce forfeitures or to decide civil rights.

Id. at 315 (emphasis added).

In the instant case, as in *Gelston*, the claims asserted in Petitioner's lawsuit against Respondent "come incidentally in controversy" with the "same subject matter" as that adjudicated by the Texas probate court, and thus constitute the kind of "indirect" and "collateral" attack on the probate court's jurisdiction that this Court refused to allow in *Gelston*. Although the Ninth Circuit did not cite *Gelston v. Hoyt* in its opinion, its reasoning closely parallels that of Justice Story nearly two centuries ago. The Ninth Circuit expressly cited to the general principles governing *in rem* jurisdiction and the binding effect "upon the whole world," including United States district courts, of determinations by a court with such jurisdiction. App. 34-35. According to the Ninth Circuit, Petitioner's claim that Decedent intended to give her a gift "went to the very essence of the testamentary instruments executed by J. Howard Marshall II in his lifetime." App. 35. Likewise, her claims that Respondent engaged in transactions which "wrongfully depleted the trust and estate of J. Howard Marshall" were claims that, if successfully brought in probate court, would have resulted in a money judgment against Respondent and in favor of "the estate of J. Howard Marshall II." App. 35. Finding that her claims were "'in substance

nothing more than a thinly veiled will contest,'" App. 31 (quoting *Moser v. Pollin*, 294 F.3d 335, 340 (2d Cir. 2002)), the Ninth Circuit concluded:

> We agree with the contention of E. Pierce Marshall that the probate exception to federal court jurisdiction applies in this case because Vickie Lynn Marshall's claims were simply *a disguised attack* on J. Howard Marshal II's 1982 trust, as amended, and on the postmortem disposition of his property as provided in the trust.

App. 36-37 (emphasis added).

Petitioner's civil proceeding against Respondent proves Justice Story to have been clairvoyant when he warned about the "mischievous consequences" that would result if courts exercising *in rem* jurisdiction were made subject to "indirect," "collateral," "disguised" or "thinly veiled" attacks. Probate courts are granted exclusive jurisdiction in order to grant the relief "against the world" necessary to enable their effective exercise of jurisdiction over the *res*. A rule that permits indirect or collateral challenges to that jurisdiction will undermine the principles that are essential to *in rem* jurisdiction and lead to the very "injurious and unseemly conflict" among federal and state courts that those principles were specially designed to avoid.

IV. THE CONCERNS RAISED BY THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF THE PETITIONER ARE MISPLACED AND DO NOT WARRANT DEVIATION FROM THE UNIFIED PRINCIPLES THAT GOVERN *IN REM* PROCEEDINGS.

In its brief filed as *amicus curiae* in support of the petitioner, the United States argues for reversal of the Ninth Circuit's decision. The United States raises two concerns with respect to the Ninth Circuit's interpretation of the probate

exception: first, that it will deprive federal courts of jurisdiction to decide disputes over federal tax liability; and second, that it could interfere with the ability of the bankruptcy system to administer debtors' estates expeditiously, fairly and efficiently.

The first concern raised by the United States is misplaced, as illustrated by the Court's decision in *United States v. Bank of New York & Trust Co.*, 296 U.S. 463. In that case, the United States brought suit in federal district court seeking an accounting and delivery of funds in the possession of New York's superintendent of insurance. *Id.* at 470. Based upon the object of the suits, which was "to take the property from the depositaries and from the control of the state court, and to vest the property in the United States to the exclusion of all those whose claims are being adjudicated in the state proceedings," the Court properly held that the federal district court lacked jurisdiction. *Id.* at 478. In so holding, however, the Court recognized that the actions were not brought "merely to establish a debt or a right to share in the property." *Id.* at 478.

This Court's decision in *United States v. Bank of New York & Trust Co.* was specifically cited in *Markham v. Allen*, 326 U.S. 490 (1946), where the Court held in the context of the probate exception that "federal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heirs' and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court." *Id.* at 494. Thus, the Ninth Circuit's decision below, if affirmed, will not necessarily defeat the *in personam* jurisdiction of a federal court to adjudicate the federal tax liability of a decedent's estate, where the United States does not also request the federal district court to cause the turnover or other disposition of such estate property, nor otherwise seek to interfere with the probate court's exclusive

jurisdiction in a manner contrary to principles established in *Gelston*, *Markham*, *Hood* and other decisions of this Court.[10]

Nor should the United States or the Program be concerned that this Court's recognition of a "probate exception" consistent with the Ninth Circuit's opinion below would impair the ability of bankruptcy courts to administer bankruptcy estates expeditiously, fairly, and efficiently. In seeking to allow federal court jurisdiction to intrude upon the exclusive *in rem* jurisdiction of probate courts, the United States fails to give due consideration to the more prevalent harm to the bankruptcy system that could result if the exclusive *in rem* jurisdiction of bankruptcy courts were vulnerable to the same kind of indirect attacks that Petitioner has launched against the exclusive *in rem* jurisdiction of the Texas probate court.

In *Hood*, this Court recognized the fundamental importance of a bankruptcy court's broad *in rem* jurisdiction in providing a debtor with the fresh start that is a central purpose of bankruptcy law:

> A bankruptcy court is able to provide the debtor a fresh start in this manner, despite the lack of participation of all of his creditors, because the court's jurisdiction is premised on the debtor and his estate, and not the creditors.

Hood, 541 U.S. at 447. The same principle applies in probate proceedings, where broad *in rem* jurisdiction is also nec-

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[10] The concurrent jurisdiction of federal district courts and probate courts to adjudicate the validity and amount of claims against a decedent's estate is analogous to the concurrent jurisdiction of federal and state courts to adjudicate the validity and amount of claims against a debtor's estate in bankruptcy. But just as a state court clearly lacks jurisdiction to grant a bankruptcy discharge or confirm a plan of reorganization, or adjudicate whether a bankruptcy court properly discharged a debt or confirmed a plan, a federal court lacks jurisdiction to adjudicate the intent of a decedent under a will or trust.

essary to provide complete settlement of a probate estate "against the world":

> The public interest requires that the estates of deceased persons, being deprived of a master, and subject to all manner of claims, should at once devolve to a new and competent ownership; and, consequently, that there should be some convenient jurisdiction and mode of proceeding by which this devolution may be effected with least chance of injustice or fraud; and that the result attained should be firm and perpetual. . . . These objects are generally accomplished by the constitution and powers which are given to probate courts, and the modes provided for reviewing their proceedings. And one of the principal reasons assigned by the equity courts for not entertaining bills on questions of probate is, that the probate courts themselves have all the powers and machinery necessary to give full and adequate relief.

Broderick's Will, 88 U.S. at 509-10.

As explained *supra*, the principles of *in rem* jurisdiction that this Court has developed over the past two hundred years has not only enabled bankruptcy, probate and other courts to exercise their *in rem* jurisdiction more effectively, but also has been characterized by this Court as essential to preserve harmony and cooperation among federal and state courts. Given those policy imperatives, the specific concerns raised by the United States as *amicus curiae*, even if they were germane, should nevertheless yield to the invaluable benefits achieved through a unified theory of *in rem* jurisdiction that is designed to avoid "injurious conflicts" among courts. One need look no further than the history of this case, and the conflict that arose between the federal bankruptcy court and

state probate court, to remind us of the larger importance of those principles.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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